REMARKS

Claims 30-76 were pending in the application at the time of the Restriction Requirement. The restriction set forth a requirement requiring Applicants to elect one of the following groups of claims for prosecution on the merits:

Group I: 30-51, drawn to a spatial position determining method, classified in class 356, subclass 614.

Group II: 52-76, drawn to a measuring appliance, classified in class 356, subclass 3.

On the outset, and as discussed with the Examiner over the telephone on December 19, 2008, this application is a national application filed under 35 U.S.C. 371 **not** a national application filed under 35 U.S.C. 111(a). Therefore, the standard applicable to this application is "Unity of Invention" not restriction practice pursuant to 37 CFR 1.141-1.146. As such, the Applicant respectfully requests that the Restriction Requirement mailed October 3, 2008 be withdrawn as improperly based on the wrong inquiry.

As set forth in MPEP 1893.03(d):

> Examiners are reminded that unity of invention (**not** restriction practice pursuant to 37 CFR 1.141 - 1.146) is applicable in international applications (both Chapter I and II) and in national stage applications submitted under 35 U.S.C. 371.

(Emphasis added). Therefore, the Applicant respectfully requests that the restriction requirement be withdrawn as restriction practice pursuant to 37 CFR 1.141-1.146 is inapplicable to patent applications filed under § 371.

Moreover, the analysis required for a unity of invention requirement has not been set forth so the Applicant is unable to properly consider such a requirement, if one were intended, and properly respond. According to MPEP 1893.03(d):

> When making a lack of unity of invention requirement, the examiner **must** (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique **special technical feature** in each group.

(Emphasis added). Therefore, the Applicant respectfully requests such analysis required by the MPEP be provided if such a unity of invention requirement is set forth in a subsequent Office Action.

Moreover, the Applicant notes that the difference in classification of the groups of claims identified by the Office Action is insufficient for a unity of invention requirement. According to MPEP 1850, "the International Searching Authority or the International Preliminary Examining Authority should not raise objection of lack of unity of invention merely because the inventions claimed are classified in separate classification groups or merely for the purpose of restricting the international search to certain classification groups." Rather, the USPTO tends to lend deference to the determination of the International Examining Authority in the determination of unity of invention, and in this case, no such requirement was made by the International Examining Authority.

Nevertheless, should the Examiner decide that the restriction requirement set forth in the Office Action mailed October 3, 2008 is proper, in direct contradiction to MPEP 1893.03(d), Applicant hereby provisionally elects Group I containing claims 30-51 for examination with traverse for the reasons set forth above.

The Commissioner is hereby authorized to charge payment of any fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178, including, but not limited to: (1) any filing fees required under 37 CFR § 1.16; and/or (2) any patent application and reexamination processing fees under 37 CFR § 1.17.

Dated this 2nd day of January, 2008.

Respectfully submitted,

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